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MEMORANDUM

To: OEA Board of Directors /Membership
Re: OEA Legislative Reform Committee ("Committee")
Date: May 12, 2016

Committee Members:

John Doherty – 519-575-7518 (john.doherty@gowlingwlg.com)
Ken Strong – 519-573-3535 ext. 23 (strong@municipallawyers.ca)
Changming Guo – 416-392-0106 (cguo@toronto.ca)
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Robert Piper – 905-704-2895 (Robert.Piper@ontario.ca)

The Committee has been considering potential legislative reforms to the *Expropriations Act* ("Act") in the following areas (or others you may propose) and would appreciate your input, both at the Ottawa members night on May 19, 2016 and the Spring Meeting on June 1, 2016, as well as over the summer via the OEA website, or via calls / e-mails to any of the Committee members noted above. We propose to digest the various comments received and provide an update report to the membership at the OEA Annual Fall Seminar (likely at that stage without recommendations to vote upon). Please state your comments / reasons in summary form.

1. Interest rate – currently the Act sets the interest rate at 6% and is limited to market value and injurious affection amounts outstanding. To the extent that the rate differs from market interest rates, there may be seen to be benefits to either claimants or authorities. Should the rate be a floating rate, as applies in typical litigation as set out in the *Courts of Justice Act* and the *Rules of Civil Procedure*? Should advance payments by authorities to the owner or into Court be allowed to stop interest running despite the failure of the owner to accept the s.25 offer?

2. Disturbance damages – currently the Act and as interpreted does not provide for payment of interest except on market value and injurious affection claims. Should interest be applicable to disturbance or other claims, particularly for out of pocket amounts spent to address impacts or to mitigate impacts? Should the word 'costs' in s.18 be replaced with 'damages' to distinguish these from and avoid confusion between damages and costs under s.32(1)?

3. Costs – given the costs and delays to assess costs before an Assessment Officer of the Superior Court, and who have not had the benefit of hearing the original evidence should the Act be amended to remove the reference to assessment of costs by the assessment officer in favor of the OMB being given an exclusive and broader renewed mandate to 'fix the costs' as already exists per s.32(1) of a claim before them? Could this typically be done in summary fashion by brief written submissions from counsel along with a Bill of Costs as is often done in Superior Court matters? Should the OMB be given the added resources to carry out this function and/or designate specific members to undertake this role?

4. Interim Costs -Should the Act be amended to provide explicitly for payment of interim costs as now occurs in some provinces (e.g., on an annual basis and supervised by OMB?) so as to balance the scales between claimants and authorities in lengthy cases?

5. Inquiry Hearings –should the Act state explicitly that the Inquiry Officer report should be delivered within a specific time period after completion of the case? Should the Act explicitly state that the Report is a public document and disclosable to the public? Should the Act be amended to remove the $200 costs limit awarded by the Inquiry Officer? Should the costs of the Inquiry be in the discretion of the Inquiry Officer and presumptively payable by the authority unless the owners case is not advanced in good faith, competently or addressed irrelevant matters not helpful to the Inquiry?

6. Board of Negotiation – should the jurisdiction of the BON be expanded to address both mediation and if not successful then arbitration of 'smaller scale' cases with the arbitration before another BON member in an abridged customized procedure to be determined by the BON with input from the parties on the procedural requirements. How would the 'smaller scale' cases be determined by dollar value of the claim? Should additional arbitration or other expertise be added to the membership of the BON to better carry out this expanded role? Should the membership be expanded to accommodate an expanded jurisdiction or should the practice of two members attending each BON meeting be discouraged / eliminated?

7. Should there be a statutory clarification of the s.22 limitation as to when an injurious affection claim starts and ends relative to project construction start and completion dates?

8. Should the authority be entitled to rely upon more than one offer of compensation being considered by the OMB in regards to the costs rules under s.32, similar to the R.49 costs rules in typical litigation as set out in the *Courts of Justice Act* and the *Rules of Civil Procedure*? Would this impose undue burden on claimants given the fundamental difference of a forced sale?

9. Authorities in some cases of relatively minor strip takings may be put to considerable expense and have difficulty serving expropriation notices and s.25 offers to all 'owners' /registered owners as broadly defined in the Act (e.g., a large condominium complex) - are there ways that the authority should be afforded an opportunity to serve a central entity to make this requirement less onerous? (e.g., removing tenants from definition of 'registered owner'?)

10. Should the rights under s.41 or s.42 be time limited and reciprocal, so that if expropriated land remains vacant for a certain fixed period it be deemed abandoned and conversely after a certain fixed period of time the right of repurchase expires?

JSD:/hp